Office - Supreme Court, U. S.
FILED
FEB 15 1951
CHARLES ELMORE CROPLEY
CLERK

No. 490.

In the

Supreme Court of the United States

STANDARD BRANDS, INC., a corporation, *Petitioner*,

vs.

J. F. BATEMAN, J. W. GALBREATH, E. J. DAVIS, JAMES H. MOORE and C. G. BENSON, Statutory Trustees of BATEMAN, INC., a Dissolved Corporation, *Respondents*.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

CORNELIUS ROACH,
800 Lathrop Building,
1005 Grand Avenue,
Kansas City, Missouri,
and
JOHN W. HUDSON,
718 Commerce Building,
Kansas City, Missouri,
Attorneys for Respondents, J. F. Bateman, et al.

HAROLD J. TONER,
JOHN E. HONSINGER,
Of Counsel.

SMITH-GRIEVES, LAW PRINTERS, KANSAS CITY, MO

INDEX.

PAGE

Statement of the case 1

Argument 4

1. The Court of Appeals correctly followed the principles established by the Supreme Court of the United States in ruling that a defense, not pleaded or otherwise raised at the trial, nor affirmatively disclosed on the face of the petition, is waived and cannot be urged as grounds for reversal 4

2. The judgment of the Court of Appeals is not in conflict with the case of Anderson & Brown Co. v. Anderson, 161 F. 2d 974 (C. C. A. 7th, 1947), but is in conformity with that decision 13

3. The opinion is not in conflict with the case of General Mills, Inc. v. Goldman, 184 F. 2d 359 (C. C. A. 8th, 1950), and even if it were, such conflict would not be a reason for granting certiorari, because the respective decisions were founded on the substantive law of different states and the decisions were both made by the Court of Appeals for the Eighth Circuit and therefore do not involve a conflict between circuits. The opinion also is not in conflict with Missouri decisions 14

Conclusion 18

Cases Cited.

Allen v. Trust Co. of Georgia, 326 U. S. 630, l. c. 636, 66 S. Ct. 389, l. c. 392, 90 L. Ed. 367, l. c. 370 5

Anderson & Brown Co. v. Anderson, 161 F. 2d 974 (C. C. A. 7th, 1947) 13

Beave v. St. Louis Transit Co., 212 Mo. 331, 111 S. W. 52 (1908) 20

Bloecher v. Duerbeck, 333 Mo. 359, 62 S. W. 2d 553 (1933) 17

PAGE

Bovay v. Fuller, 63 F. 2d 280, l. c. 284, pt. 9 (C. C. A. 8th, 1933) 10

Carlisle Packing Co. v. Sandanger, 259 U. S. 255, l. c. 259, 42 S. Ct. 475, l. c. 477, 66 L. Ed. 927, l. c. 930 11

Connecticut Ry. & Lighting Co. v. Palmer, 305 U. S. 493, l. c. 496-497, 59 S. Ct. 316, l. c. 319-320, 83 L. Ed. 309, l. c. 312-313 4

Eberson v. Continental Investment Co., 118 Mo. App. 67, l. c. 73, 93 S. W. 297, l. c. 299 (1906) 16

Galentine v. Borglum, 235 Mo. App. 1141, 150 S. W. 2d 1088 (1941) 17

General Mills, Inc. v. Goldman, 184 F. 2d 359 (C. C. A. 8th, 1950) 14

Helvering v. Wood, 309 U. S. 344, l. c. 349, 60 S. Ct. 551, l. c. 553-554, 84 L. Ed. 796, l. c. 799 10

Johnson v. J. I. Case Threshing Machine Co., 193 Mo. App. 198, 182 S. W. 1089 (1916) 17

Landau v. Fred Schmitt Construction Co., 237 Mo. App. 908, l. c. 918, 179 S. W. 2d 138, l. c. 142 (1944) 12

Morton v. William Barr Dry Goods Co., 120 Mo. App. 377, 103 S. W. 588, l. c. 592 (1907) 17

Mullins v. N. Y. Life Ins. Co., 1938, 304 U. S. 202, l. c. 206-209, 58 S. Ct. 860, l. c. 861-863, 82 L. Ed. 1290, l. c. 1292-1294 14

O'Hara v. Laclede Gas Co., 131 Mo. App. 428, 110 S. W. 642, l. c. 645 (1908) 17

Oppenheimer, et al., v. J. E. Young & Co., Inc., et al., 3 F. R. D. 220, l. c. 226, Point 15 7

Phegley v. Graham, 358 Mo. 551, 215 S. W. 499, l. c. 503 17

In re Woods, et al., 143 U. S. 202, l. c. 206, 12 S. Ct. 417, l. c. 418, 36 L. Ed. 125, l. c. 126 18

PAGE

Statutes Cited.

Rule 8(c) of the Federal Rules of Civil Procedure..... 5
Cyclopedia of Federal Procedure, 2d Ed., Vol. 4, Sec. 1303, p. 633.....6, 8
Cyclopedia of Federal Procedure, 2d Ed., Vol. 4, Sec. 1444, p. 713..... 7
Rule 50 (a) of the Federal Rules of Civil Procedure..... 9
Title 28, U. S. C. A., Sec. 2111.....11

Texts Cited.

41 Am. Jur., Pleading, Sec. 135, p. 383..... 6
Simkins, Federal Practice, 3rd Edition, Sec. 1002, p. 720 10
Hughes, Federal Practice, Jurisdiction and Procedure (1931 edition), Col. 8, Sec. 6301, p. 538.....14, 15
Hughes, Federal Practice, Jurisdiction and Procedure (1931 edition), Vol. 8, Sec. 6302, pp. 547-548; Sec. 6254, p. 513.....16